

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60740

FILE: B-185489

DATE: April 9, 1976

MATTER OF: Singleton Trading Company

99082

DIGEST:

1. Addendum to IFB for sale and removal of two metal buildings separately or in combination added third building and combinations of third building with original buildings as bid items. Protester's bid in response to addendum did not effect withdrawal of initial bid, since alternative bids were proper under solicitation, and each of protester's bids was consistent with other; moreover, IFB's proscribed withdrawal procedure was not followed.
2. Bid on one of three bid items in IFB for sale and removal of metal buildings was accompanied by required 10-percent deposit. Subsequent bid on item added by addendum did not have bid deposit with it but contained notation: "Cashier's Check No. 112212 in amount of \$700 inclosed in original bid envelope * * *," which protester argues transferred original deposit to subsequent bid, thereby making initial bid unresponsive. However, both bids were properly considered responsive, since only one of two items could have been awarded and deposit submitted was sufficient for either.

Invitation for bids (IFB) No. GSA-R-849 was issued by the Fort Worth, Texas, regional office of the General Services Administration (GSA) for the sale and removal of metal buildings 162 and 165 from a site at Kelly Air Force Base, San Antonio, Texas. Bidders were permitted to bid on each building separately (items 1 and 2) or to submit a combined price for both buildings (item 3). Bid opening was scheduled for November 19, 1975. On November 14, 1975, addendum No. 1 added building 161 as item 4 and three additional bid items combining building 161 with buildings 162 and 165. The addendum also extended the bid opening date to December 3, 1975.

Singleton Trading Company (Singleton) submitted a bid on item 3 under the original solicitation in the amount of \$6,667 and enclosed with the bid a deposit of \$700 in accordance with paragraph 1a(2) of the IFB Special Terms of Sale which required a 10-percent bid deposit. Subsequently, in response to addendum No. 1, Singleton submitted a bid on item 5, which included all three buildings, in the amount of \$7,000. The following notation was entered on the latter bid: "Cashier's Check No. 112212 in amount of \$700 inclosed in original bid envelope, (bid on item #3)." The only other bid received under the IFB was submitted by the City of Pleasanton in the amount of \$2,510 for building 161. Bids were opened as scheduled on December 3.

The contracting officer considered Singleton's initial and subsequent bids as alternative bids for buildings 162 and 165 in the amount of \$6,667 and for all three buildings in the amount of \$7,000. Since the maximum return to the Government would result from the award of contracts on buildings 162 and 165 to Singleton and on building 161 to the City of Pleasanton, the contracting officer proposed to make awards on that basis.

Prior to award, Singleton objected to the contracting officer's decision contending that, by virtue of its bid on item 5, it had withdrawn its bid on item 3. Singleton argued that it had intended to bid only on an all-or-none basis, as it alleged it always did, to avoid its work crew from mingling with crews of other contractors. The contracting officer rejected the argument on the basis that the original bid had not been withdrawn in the manner specified by the IFB.

On the day following bid opening, Singleton alleged that the notation on its bid on item 5 concerning its bid deposit transferred the deposit from its bid on item 3 to its bid on item 5, thereby causing its initial bid to become nonresponsive for lack of a bid deposit. The contracting officer responded that, it being impossible to award both items 3 and 5, since item 5 contained both buildings which item 3 consisted of, the bid deposit of \$700 was sufficient to satisfy both bids.

Singleton's protest to this Office followed. However, because of the need to expedite removal of the buildings, the contracting officer, pursuant to Federal Procurement Regulations § 1-2.407-8(b)(4) (1964 ed. amend. 68), proceeded to award contracts for the sale and removal of buildings 162 and 165 to Singleton and of building 161 to the City of Pleasanton. Singleton has completed removal of buildings 162 and 165. Removal of building 161 has been delayed pending resolution of the protest.

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In regard to Singleton's argument that its response to addendum No. 1 effected a withdrawal of its initial bid, we note that the addendum merely added a building and combinations of buildings for sale and had no effect on items 1, 2 or 3. Thus, a bidder could intend to bid on both items 3 and 5. Singleton's two bids are therefore entirely consistent with one another and there is no basis for concluding that the second revoked the first. See B-150214, November 29, 1962. Hence, absent withdrawal of the initial bid prior to the time set for receipt of bids in accordance with paragraph 3(b) of the IFB Instructions to Bidders, it was proper for the contracting officer in evaluating bids for award to consider Singleton's second bid as an alternative and not as a replacement. Moreover, an entry in a contact record prepared by the contracting officer and dated December 3, the date of bid opening, describes a conversation with Mr. Stanley Singleton that took place just after bid opening, in pertinent part, as follows:

"After the bid opening was concluded and as this bidder and I were leaving the room, he commented that he didn't realize he was going to be high bidder on all three biddings and that he had removed 2 similar buildings in 45 days at Kelly and that he would be pressed to remove all three in the 60 days allowed. In discussing this it was disclosed that a fourth building in the immediate area, Building No. 163, * * * had recently been awarded to Orange County for airport use. He indicated prior knowledge of this and voiced no objection about possibility of their work crew being in the same area as his if he received award. It was also pointed out that the Government had the option of selecting either his bid for Item No. 3 or 5. He then raised issue about not being willing to have a competitor's crew in the same work area as his and being the reason he bid all-or-none for the 3 buildings under Item No. 5. * * *" (Emphasis added.)

In view of the above, and since the two bids must be considered alternative bids, and item 3 represented less than the entire

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quantity to be sold, Singleton's position that only an all-or-none bid for the three buildings was intended is not supported by the record.

Finally, the notation on its second bid, "Cashier's Check No. 112212 in amount of \$700 inclosed in original bid envelope, (bid on item #3)," does not support Singleton's contention that it withdrew the bid deposit from its initial bid. Rather, the notation more reasonably indicates that the \$700 bid deposit was intended to apply to either bid. Further, since only one of the two items for which Singleton submitted bids could have been awarded (item 5 included the two buildings which comprised item 3), there was no need for a bid deposit in excess of that required to satisfy the greater of the two bids in order to make either bid responsive. Here, a \$700 deposit was sufficient. Accordingly, and since the initial bid was not effectively withdrawn, both bids were properly considered responsive by the contracting officer. Cf. Repco Industries, Inc., B-181208, July 29, 1974, 74-2 CPD 67; B-168460, February 2, 1970; George Epcar Co. v. United States, 377 F.2d 225 (10th Cir. 1967).

On the basis of the above, the sale of buildings 162 and 165 to Singleton for \$6,667 and of building 161 to the City of Pleasanton for \$2,510 was proper. Singleton's protest is, therefore, denied.


Acting Comptroller General
of the United States